v. *Templeton*, 185 U. S. 487. So that to those coming within the qualifications, the privilege of voting is ultimately secured by the Constitution, and within the protecting power of Congress. *Ex parte Yarbrough*, *supra;* see *Wiley* v. *Sinkler*, 179 U. S. 58. The well-considered opinion in the principal case would therefore seem clearly correct.

CONTRACTS — DEFENSES: FRAUD — MISSTATEMENT OF PRINCIPAL'S MINIMUM SELLING PRICE BY AGENT AUTHORIZED TO RETAIN WHOLE SURPLUS. — A broker, authorized to sell certain land at $12,000 or any higher price and retain the whole surplus, stated to the buyer that the land could not be bought for less than $12,500. Later, under pretence of having seen the owner at the defendant's request, he declared that the owner would take no smaller sum. He now sues on a check for $500 given by the buyer to complete payment for the land at that price and the buyer pleads fraud. *Held*, that the broker may recover. *Aronowitz* v. *Woollard*, 152 N. Y. Supp. 11 (App. Div.).

Courts have gone far to justify seller's talk as immaterial, or expressing opinion only, and to hold the buyer to a standard of care. *Page* v. *Parker*, 43 N. H. 363; *Mooney* v. *Miller*, 102 Mass. 217; *Graffenstein* v. *Epstein & Co.*, 23 Kan. 443. See 2 KENT, COM. 486. The overworking of these methods of approaching the problem has been criticised. See 8 HARV. L. REV. 63; 15 *id.* 576; 25 *id.* 472. But the misstatement by the seller of the lowest price he will accept furnishes an instance where "seller's talk" must be permitted although the statement is one of material fact and the buyer may not be negligent, because the inherent nature of a bargain would render any other rule highly unreasonable and impracticable. And there is much reason to extend this exemption to the agent, especially where, as in the principal case, he is the only party interested in keeping up the price. *Ripy* v. *Cronan*, 131 Ky. 631, 115 S. W. 791; *McLennan* v. *Investment Exchange Co.*, 170 Mo. App. 389, 156 S. W. 730; *cf. Merryman* v. *David*, 31 Ill. 404. *Contra*, *Hokanson* v. *Oatman*, 165 Mich. 512, 131 N. W. 111. In the principal case, as the agent has gone further and has led the buyer to believe that the seller had been given an opportunity to reconsider, it is possible that he has exceeded his privilege and that his recovery should accordingly be defeated on account of fraud. *Kice* v. *Porter*, 22 Ky. L. Rep. 1704, 61 S. W. 266. But it seems proper to allow the buyer to reap no benefit from his meddlesome questions which would unfairly prejudice the plaintiff's bargain if truthfully answered or ignored.

CORPORATIONS — DISTINCTION BETWEEN CORPORATION AND ITS MEMBERS — DISREGARDING THE CORPORATE FICTION. — The defendant by fraud obtained patents to certain lands. In order to keep the title concealed until after the statutory period for setting aside these patents had elapsed, he organized a corporation to which he conveyed the lands, but failed to record the conveyance. Suit to annul the patents was brought against him within the statutory period; but the corporation was not joined until after the statutory period had elapsed. *Held*, that the patents may be annulled. *Linn & Lane Timber Co.* v. *United States*, 236 U. S. 574.

Where a new party is brought into a suit, the Statute of Limitations continues to run as to him until actually made a party. *Shaw* v. *Cock*, 78 N. Y. 194; *Miller* v. *M'Intyre*, 6 Pet. (U. S.) 61. But the court in the principal case declares that since the corporation was the mere tool of the defendant, it will not be treated as a new party. It is generally said that the courts will disregard the fiction of a separate corporate entity whenever this becomes necessary to the attainment of justice. 3 COOK, CORPORATIONS, 7 ed., §§ 663, 664; 2 MORAWETZ, PRIVATE CORPORATIONS, § 227. Such broad statements have led to much loose thinking. In nearly all the cases, moreover, the desired

result could have been reached on other more satisfactory grounds. See 20 HARV. L. REV. 223; 27 *id.* 386. And in general, the courts should be extremely cautious in relying upon a principle so vague, and so likely to breed confusion in the law of corporations. See *Gallagher* v. *Germania Brewing Co.*, 53 Minn. 214, 219. But where the corporate machinery is obviously being used to perpetrate a fraud, and where a just result can be reached on no other theory, it is perfectly justifiable to disregard the fiction. The peculiar interest of the principal case lies in the fact that it appears to be one of the few instances in which a disregard of the fiction is really necessary. It is still barely possible, however, that the same result might have been reached on the ground that by colluding with the grantee to perpetrate his fraud, the corporation had estopped itself from setting up the statute. See *Union Mortgage, Banking & Trust Co.* v. *Peters*, 72 Miss. 1058, 18 So. 497; *Bridges* v. *Stephens*, 132 Mo. 524, 543.

CORPORATIONS — STOCKHOLDERS: RIGHTS INCIDENT TO MEMBERSHIP — SUIT IN BEHALF OF CORPORATION: EFFECT OF PRIOR SUIT BY ANOTHER STOCKHOLDER. — The plaintiff brought a shareholder's bill to have a contract between his corporation and a third party set aside as fraudulent. The defendant set up a prior suit by another shareholder in which the agreement had been attacked as voluntary and *ultra vires*. *Held*, that the matter is *res judicata*. *Dana* v. *Morgan*, 219 Fed. 313 (Dist. Ct., S. D., N. Y.).

A shareholder's bill is founded upon the right of the shareholder to compel the corporation to assert some right or defense which it has against the third party. *Hearst* v. *Putnam Mining Co.*, 28 Utah 184, 77 Pac. 753. The corporation is, therefore, a necessary party; and its refusal to sue, or facts disclosing the futility of a demand for suit, must be alleged. *Davenport* v. *Dows*, 18 Wall. (U. S.) 626; *Hawes* v. *Oakland*, 104 U. S. 450; *Mount* v. *Radford Trust Co.*, 93 Va. 427, 25 S. E. 244. Since, in substance, a right of the corporation is in issue, an adjudication on the merits bars a subsequent action either by the corporation or by another shareholder. *Montezuma Cattle Co.* v. *Dake*, 16 Colo. App. 139, 63 Pac. 1058; *Hearst* v. *Putnam Mining Co.*, *supra*; *Alexander* v. *Donohoe*, 143 N. Y. 203, 38 N. E. 263. But if the prior action does not go to the merits, as where the suit is dismissed for failure to allege the refusal of the corporation to sue, a subsequent action can be maintained. *The Telegraph* v. *Lee*, 125 Ia. 17, 98 N. W. 364. The principal case correctly disallows a second action even though relief was asked on a varied ground. See *Fayerweather* v. *Ritch*, 91 Fed. 721, 725. This result, although perhaps occasionally depriving a corporation of a right of action lost through a shareholder's unsuccessful method of presentation, seems justifiable as a deterrent to corporate inaction. It would, of course, not follow were the shareholder suing in his own right. See *Morris* v. *Elyton Land Co.*, 125 Ala. 263, 28 So. 513.

DEATH BY WRONGFUL ACT — DEFENSES TO STATUTORY LIABILITY — RELEASE BY DECEASED. — The plaintiff's husband, who was killed by defendant's negligence, before his death gave a full release of all claims. The widow now sues, under a statute giving the next of kin an action where death is caused by negligence. *Held*, that she may recover. *Rowe* v. *Richards*, 151 N. W. 1001 (S. D.).

For a discussion of the questions raised by this case, see NOTES, p. 802.

DEATH BY WRONGFUL ACT — STATUTORY LIABILITY IN GENERAL — LIABILITY TO WIDOW WHO MARRIED DECEASED AFTER INJURY. — The deceased, after being mortally injured through the defendant's negligence, married the plaintiff who had previously become engaged to him. The plaintiff now sues